IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 7 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES Yes.

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? Yes
To be circulated to lower Court dealing with Criminal Matters.

RAJESHBHAI CHANDUBHAI AND ANOTHER

Versus

STATE OF GUJARAT

Appearance:

MR VINOD H THAKORE for Petitioners

MR AJ DESAI, APP for Respondent

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 07/02/2001

ORAL JUDGEMENT

1. Rajeshbhai Chandubhai and others, applicants-original accused have filed this Criminal Revision Application under Sec. 397 read with Sec. 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as `Code') challenging the order dated 19th December, 2000, passed by learned Sessions Judge, Bharuch in Sessions Case No.130 of 1999. The petitioners have also challenged the order of learned Sessions Judge dated 19th October, 2000, passed below Exh.37 deposition of Maheshbhai Natvarbhai, order dated 9th November, 2000, passed below Exh.38 - deposition of Gautam Shanabhai

Vasai and order dated 9th November, 2000, passed below Exh.39 - deposition of Manojbhai Ravjibhai Patel also. So in all the petitioners have challenged the aforesaid four orders of the learned Sessions Judge, Bharuch. The learned Judge by the said orders was pleased to reject the application filed by the accused at Exh.55 filed under Sec.311 of the Cr.P.C. for recalling the three prosecution witnesses for contradicting them with their respective polcie statements and prove the same and to grant permission for cross-examination in connection with those and other related facts.

2. The facts giving rise to this application are as under:

2.1 The applicants-accused are being tried by the learned Sessions Judge, Bharuch for the offences punishable under Secs. 147, 148, 149, 326, 324 and 323 of the Indian Penal Code and also under Sec.135 of the Bombay Police Act. The charge against the accused was that on 29-9-1998 at about 1.00 a.m. in Bhaliyavad in Bharuch formed an unlawful assembly whose common object was to cause grevious and simple hurt to various prosecution witnesses and at that time they were armed with various weapons like pipe, sticks, sword, wooden handle etc. It was further submitted that in pursuance thereof the accused caused grievous hurt to Gautam Shanabhai, Manojbhai Ravjibhai, Rajeshbhai Vinodbhai, Vinodbhai Shanabhai and Maheshbhai Natvarbhai and it has been registered as Sessions Case No. 130 of 1999.

2.2 The applicants-accused have also stated that the learned Sessions Judge has also tried another cross case being Sessions Case No.33 of 1999. In that case there was offence punishable under Secs.147, 148, 149, 302, 307, 120-B of the Indian Penal Code and also under Sec.135 of the Bombay Police Act against nine accused. It has been stated that out of this nine accused, six injured prosecution witnesses (which are stated earlier) are also the accused and there are (other prosecution witnesses whose names are mentioned earlier and three prosecution witnesses) namely Kanubhai Chhanabhai, Tino Chhanabhai and Pravinchandra Vinodchandra. It has been stated that they were prosecuted on the charge that they on 29-9-1998 at about the same time and place formed an unlawful assembly and in pursuance of the conspiracy hatched went armed knife, pipe sticks and other deadly weapons and accused Vinod Shanabhai inflicted knife blow to Jiteshbhai Sakerlal, brother of the applicant No.2 Chandrakant Sakarlal on the left side of his chest which resulted in his death and also voluntarily caused hurt to

applicant No.1 Rajeshbhai Chandubhai and the applicant No.2 Chandrakant Sakarlal and it has been registered as Sessions Case No.33 of 1999.

2.3 The learned Counsel for petitioners has submitted that the applicants during the trial of Sessions Case No.130 of 1999, the prosecution examined sixteen witnesses including the Investigating Officer P.I. Shri G.N.Chavda. The prosecution examined all the above named six injured eye witnesses. However, during the course of their evidence, three of them namely prosecution witness No.13 Maheshbhai Natvarbhai (Exh.37), prosecution witness No.14 Gautam Shanabhai (Exh.38), prosecution witness No.15 Manojbhai Ravjibhai (Exh.39) did not support the prosecution version on material particulars and so they were treated hostile. The learned Sessions Judge permitted the learned Additional Public Prosecutor to cross-examine them (those three witnesses) and to contradict their version before the police found recorded in their respective police statements under sec.161 as provided under sec.162 of the Code in the manner laid down under sec.145 of the Indian Evidence Act eventhough they falsely denied during their examination-in-chief that the police had recorded their statements.

2.3(A) The learned counsel for the petitioners submitted that from the contents of the certified copies of the evidence of these three prosecution witnesses that only in the evidence of prosecution witness No.14 below Exh.38, after para 3 of Examination-in-Chief, note is made regarding the request made by Additional Public Prosecutor for treating the witness hostile and the same being granted by the learned Sessions Judge eventhough the witness denied that his statement was recorded by the police. While at the end of para 2 of the Examination-in-Chief of prosecution witness No.13 below Exh.37, only word hostile is mentioned. Similarly, at the end of para 2 of Examination-in-Chief of prosecution witness No.14, below Exh.39, only word hostile is mentioned and thereafter there is no mention of his cross-examination or contradictions from his police statement being brought on record in his evidence by the learned Additional Public Prosecutor.

2.4 The learned counsel further submitted that if the learned advocate for the accused during the course of his cross-examination in the above mentioned three eye witnesses wanted to confront them with their version before the police and to contradict their version in the evidence with their version in their police statements as per the proviso of Sec.162(1) of the Code and to bring

them on record as he was furnished with the copies of their police statements. The learned counsel for the applicants submitted that the learned Sessions Judge refused the same on the ground that these witnesses had denied during their evidence that the police had recorded their statements eventhough he had permitted the learned Additional Public Prosecutor to contradict them with their respective police statements under that very proviso, in spite of the fact that they had during their examination-in-chief denied that the police had recorded their statements.

2.5 The learned counsel for the applicants further submitted that thereafter the learned Additional Public Prosecutor on 28.11.2000 submitted an application Exh.49 to the learned Sessions Judge. It was stated that it was likely that an application on behalf of the accused would be submitted for recalling the aforesaid three witnesses and so he was submitting the application as and by way of advance planning and as on 11.12.2000 evidence of the investigating officer was to be recorded, summons be issued to those three witnesses to remain present before the Court on that date, because he felt it necessary to do so. This application was shown to the learned advocate for the accused also and the learned Sessions Judge ordered for issuance of the summons to those witnesses as prayed for.

2.6 It was further submitted that on 19.12.2000 examination-in-chief of prosecution witness No.16 investigating officer P.I. Shri G.N.Chavda was recorded and he deposed that he had recorded the statements of the aforesaid three prosecution witnesses. The learned Addl.Public Prosecutor through his evidence brought on record their version before him in their respective police statements which were earlier denied by them during their examination-in-chief by the learned APP before they were treated hostile.

2.7 The learned counsel for the applicants further submitted that before the trial court after examination-in-chief of the investigating officer was completed and before cross-examination of the learned advocate for the accused was to commence, the learned advocate for the accused filed an application Exh.55 under sec.311 of the Code for recalling the aforesaid three prosecution witnesses for contradicting them with their respective police statements and to prove the same and to grant permission for cross-examination in connection with those and other related facts. In the said application it was mentioned the above facts and

stated the facts regarding the learned Addl.Public Prosecutor be permitted to bring them their contradictions from their respective police statements on record after they were treated hostile, even though they denied in their examination-in-chief that their statements were recorded by police. It was stated by the learned advocate for the accused that he was not permitted to bring their contradictions from their police statements on record. It was submitted that the investigating officer in his deposition clearly stated that he had recorded the statements of these three witnesses also during his examination-in-chief before the trial court praying for recalling these three prosecution witnesses for the purpose stated above.

2.8 The learned Sessions Judge by his order dated 19th December, 2000, passed below Exh.55 rejected the said application on the ground that those witnesses in their evidence had denied that their statements were recorded by police and so at that time permission was not granted to bring their contradictions of their police statements on record. The learned Sessions Judge also observed that the learned advocate for the accused was directed to frame the questions in writing but he submitted that they were in connection with the scene of offence and other related questions. He further held that no sufficient and satisfactory grounds were made out for recalling those witnesses. There was no guarantee that those witnesses would admit that their statements were recorded by police. The learned Judge further observed that the submission that prejudice would be caused to the accused in their defence was errorneous and therefore rejected the application Exh.55 on the above stated grounds.

2.9 Being aggrieved and dissatisfied with the aforesaid orders of the learned Sessions Judge, the applicants-accused of Sessions Case No.130/99 preferred this Revision Application before this Court somewhere on 3rd January, 2001.

3. When the matter reached herein on 10th January, 2000, this Court issued Rule after hearing the learned advocate for the petitioners as well as learned APP Shri A.J.Desai. Thereafter, matter reached for final hearing before this Court. Shri V.H.Thakore, learned advocate appeared on behalf of the applicants-original accused and Shri A.J.Desai, learned APP appeared on behalf of the State.

4. Before I consider the submission of Mr.Thakore, learned advocate for the petitioners, let me refer to certain statutory provisions. Sec.160 of the Code provides police officer's power to require attendance of the witnesses. Sec.161 of the Code provides examination of witnesses by police:

"Sec.161 Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture."

Sec.162 of the Code provides statements to police not to be signed : Use of statements in evidence.

"Sec.162 - Statements to police not to be signed : Use of statements in evidence: - (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:"

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination."

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

Sec.145 of the Indian Evidence Act provides cross-examination as to previous statements in writing:-

"A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

Submissions of learned advocate for petitioners:-

5. The learned counsel after relying upon the aforesaid Sec.162 of the Code, submitted that the learned Sessions Judge has flagrantly violated the mandatory provisions of Sec.162 of the Code which confers the very valuable right on the accused to contradict these prosecution witnesses by their respective police statements. He further submitted that the learned Sessions Judge though permitted learned APP to contradict those three witnesses by their respective police statements after they were treated hostile inspite of the fact that they had flatly denied in their examination-in-chief that their statements were recorded by police. He further submitted that the learned Judge has clearly erred while he refused the learned advocate for the accused for permission to contradict those very witnesses by their respective police statements during their cross-examination on a flimsy ground that they denied that their statements were recorded by police. He further submitted that the learned Sessions Judge ought to have allowed the application Exh.55 as the evidence of investigating officer clearly revealed that he had recorded the statements of the aforesaid three witnesses also and in fact the applicants were furnished copies of their police statements when chargesheet was filed against them and that was the most appropriate stage for submitting the application for recalling those three witnesses for their cross-examination for the limited purpose as mentioned therein. He further submitted that the learned Sessions Judge has already granted an application Exh.49 dated 28.11.2000 submitted by learned

APP for summoning those three witnesses to remain present as he apprehended that an application to recall them would be submitted on behalf of the accused.

5.1 Learned advocate for the petitioners submitted that, as per the provisions of Sec.162 of the Code, any statements of the witnesses if the prosecution wants to take advantage he has to take permission from the Court whereas as far as accused is concerned there is no such provision under Sec.162 of the Code. He submitted that as regards accused is concerned, the right is an absolute right and therefore the denial by the learned Sessions Judge and rejecting the application Exh.55 filed by the accused is clearly contrary to and inconsistent with the sec.162 of the Code. The learned Sessions Judge has clearly not considered the provisions of Sec.162 of the Code and, therefore, the reasonings of the learned Sessions Judge and the orders passed by the learned Sessions judge is clearly illegal and same is vitiated in law. He submitted that if the accused is not allowed to cross-examine at this stage then entire defence of the accused will be destroy and for that purpose also the provisions of Sec.162 of the Code preserve and protect the right of the accused and, therefore, the learned Sessions Judge has not properly exercised the provisions of Sec.162 and has wrongly rejected the application Exh.55.

5.2 He further submitted that the learned Sessions Judge ought to have used his judicial discretion in favour of the applicants/accused to meet the ends of justice and allowed the application Exh.55 and permitted the learned advocate for the accused to cross-examine the aforesaid three witnesses for the limited purpose as mentioned therein.

5.3 In that behalf, learned advocate for the petitioners has relied upon judgment of Hon'ble Supreme Court of India in the case of Tahsildar Singh and another Vs. State of U.P. reported in AIR 1959 Supreme Court 1012. In para 11 the Hon'ble Supreme Court observed as under:

> "It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention."

"If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e., the interest of the accused."

In para 17 the Hon'ble Supreme Court observed as under:

"The section was, therefore, conceived in an attempt to find a happy `via media', namely, while it enacts an absolute bar against the statement made before a police-officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by S.145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a Court witness. Nor can it be used for contradicting a defence or a Court witness. Shortly stated there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."

In Para 23 the Hon'ble Supreme Court has referred the judgment of Patna High Court in Badri Chaudhry Vs. Emperor, AIR 1926 Pat 20 in which proviso to section 162 has been interpreted as under:

"The first proviso to S. 162(1) makes an exception in favour of the accused but it is an exception most jealously circumscribed under the proviso itself. "Any part of such statement" which has been reduced to writing may in certain limited circumstances be used to `contradict' the witness who made it. The limitations are strict: (1) Only the statement of a prosecution witness can be used; and (2) only if it has been reduced to writing; (3) only a part of the statement recorded can be used; (4) such part must be duly proved; (5) it must be a contradiction of the

evidence of the witness in Court; (6) it must be used as provided in S. 145, Evidence Act, that is, it can only be used after the attention of the witness has been drawn to it or to those parts of it which it is intended to use for the purpose of contradiction, and there are others."

5.4 The learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of Hazarilal Vs. The State (Delhi Admn.) reported in AIR 1980 S.C. 873. In para 7 on page 876 the Hon'ble Supreme Court observed as under:

"The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by S. 145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination."

6. Shri A.J.Desai, learned APP appearing on behalf of the State has tried to support the reasonings of the learned Sessions Judge order dated 19.12.2000.

Conclusion of the Court

6.1 I have considered the rival submissions made by learned advocate for the accused as well as learned APP in this behalf. In my view Secs.160 and 161 of the Code empower the police to examine witnesses in the course of investigation and to record their statements if they so desire. Sec.162 is a part or continuation of Sec.161. In order that the accused may not be prejudiced in any way by the improper use of such statements recorded loosely or inaccurately by the police. Sec.162 lays down specifically the mode in and the purpose for which the statements may be used in evidence. The object is to protect the accused both against overzealous police officers and untruthful witnesses and to recognise the danger of placing confidence on the record more or less imperfectly or inaccurately made by police officers

unacquainted with the law of Evidence. Another object of the section is to `encourage the free disclosure of the information or to protect the person making the statement from a supposed unreliability of police testimony as to alleged statement or both'. The intention is to protect the accused against the user of the statements of witnesses made before the police presumably on the assumption that the statements were not made under circumstances inspiring confidence. The section and the proviso are intended to serve primarily the interest of the accused. The words of Sec.162 are wide enough to include a confession made to a police officer in the course of an investigation.

7. The provisions of this section provide a valuable safeguard to the accused and denial thereof may be justified only in exceptional circumstances. The object of Sec.162 provides that such statement cannot be used for any purpose except to contradict a prosecution witness. The proviso of Sec.162 refers to the case where the statement has been recorded.

8. In my view, as per provisions of Sec.162 of the Code any statements of the witnesses if prosecution wants to take advantage he has to take permission from the Court whereas accused is concerned there is no such provision under Sec.162 of the Code. In my view, therefore, the right of the accused is concerned is total and an absolute right. No exception can be taken to it by the prosecution. The learned Sessions Judge has denied the said right to accused. The rejecting the application Exh.55 filed by the accused is clearly contrary to and inconsistent with Sec.162 of the Code. In my view, the reasonings of the learned Sessions Judge and orders passed by the learned Sessions Judge is clearly illegal and same is vitiated by law. In my view, therefore, if accused is not allowed to cross-examine at this stage then entire defence of the accused will be destroyed and for that purpose the provisions of Sec.162 of the Code preserve and protect the right of the accused.

9. Mr.A.J.Desai, learned APP has submitted that the orders challenged by the petitioners is an interlocutory order and, therefore, the present revision application is not maintainable as per sub-sec.(2) of Sec.397 of the Code. He submitted that the powers of revision conferred by sub-sec.(1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry or trial or other proceedings. He submitted that the revision applications against interlocutory orders have

been in terms excluded. He further submitted that this provisions is made with a view not only to avoid justice being delayed but sometimes justice defeated because by availing of the facilities to file revision applications to the High Court against interlocutory orders, the hearing of the case before the trial court may be stayed for a long period.

10. As against this submissions, Mr.Thakore, learned advocate for the petitioners submitted that it is not an interlocutory order but the orders of the learned Judge substantially affects the right of the accused as accused will be deprived of the cross-examination of the witnesses and, therefore, the said order cannot be termed as an interlocutory order. He further submitted that this order by which learned Judge rejected the application Exh.55 clearly determined the rights of the accused finally and, therefore, the order which has been passed by the learned Judge cannot be called as an interlocutory order.

11. In support of the said submission, he relied upon the judgment of the Hon'ble Supreme Court in the case of Madhu Limaye Vs. State of Maharashtra reported in AIR 1978 S.C. 47. In para 12 of the said judgment, the Hon'ble Supreme Court has observed as under:

> "Ordinarily and generally the expression `interlocutory order' has been understood and taken to mean as a converse of the term `final order'."

11.1 The Hon'ble Apex Court has relied upon the provisions of Halsbury's Laws of England and thereafter also relied upon the Federal Judgment in the case of S. Kuppuswami Rao Vs. The King, 1947 FCR 180 and also English decisions in the case of Lord Esher M.R. said in Saleman v. Warner, (1891) 1 QB 734. In para 14 on page 54 the Hon'ble Supreme Court has observed as under:

> "But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of S. 115 of the Code of Civil Procedure. We think it would be just and proper to apply the same kind of test for finding out the real meaning of the expressions "interlocutory order" occurring in S.397 (2)."

11.2 Similarly, learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court in the case of Krishnan and another Vs. Krishnaveni and another reported in AIR 1997 S.C. 987. In para 7 on page 990 the Hon'ble Supreme Court observed as under:

> "The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice."

11.3 Mr.Thakore, learned counsel for the petitioners has also relied upon the judgment in the case of Ratilal @ Shantilal Bhulabhai Desai Vs. State of Gujarat reported in 1981 (22) G.L.R. p.29. The judgment of this case was delivered by (Hon'ble Justice G.T.Nanavati,J. as he was then) wherein the Hon'ble Court opined that the interlocutory orders are only the orders within the meaning of Sec.397(2) of the Code where the orders are without deciding any point involved in the case or without in any manner giving a finding affecting the rights or liabilities of the parties and the same are interlocutory orders. In para 3 of the said decision, the Hon'ble Court has observed as under:

> "Mr.S.N.Shelat, the learned advocate appearing for the petitioners has submitted that the orders passed by the learned Magistrate staying proceedings of Criminal Cases Nos.3891 and 3892 of 1978 are interlocutory orders, because by the said orders, the learned Magistrate has not decided any point involved in the case, nor has he determined the rights or liabilities of the parties. The further proceedings in the criminal cases are not stayed for the time being; and, therefore, the order passed by the learned Magistrate are purely interlocutory. He, therefore, submitted that in view of the bar contained in sec.397(2) of the Code of Criminal Procedure, 1973 (hereafter referred to as `the Code'), the revision applications filed in the Court of the learned Sessions Judge, Bulsar at Navsari against those orders were not maintainable; and the learned Judge, therefore,

ought to have rejected the said revision applications on that ground alone. In my opinion, the contention raised by Mr.Shelat is well founded. The learned Magistrate by passing the orders dated 20-6-1979 has merely stayed the proceedings of the criminal cases without deciding any point involved in the case or without in any manner giving a finding affecting the rights or liabilities of the parties."

11.4 Lastly, Mr.Thakore, learned advocate for the petitioners has relied upon the judgment in the case of State of Gujarat v. Gaurang Mathurbhai Leuva & Ors. reported in 1999(3) G.L.R. 2325. In para 4 the Court has observed as under:

"Whether the order in question can be said to be the interlocutory is the question passed before me for consideration. The expression "interlocutory order" is not defined in Criminal Procedure Code. In order to judge whether the particular order is interlocutory or otherwise, the Court has to making every endeavour, find out whether the order in question is interlocutory order. If it is found that the order passed is purely interim or temporary in nature which does not decide or touch the important rights and liabilities of the parties and give a final shape to a particular point at a particular stage during the course of the hearing the same can be termed interlocutory order. If the order substantially affects the rights and liabilities of the parties it would not be the interlocutory order. It may also be stated that intermediate or quasi-final order which determines a particular issue finally at any stage of the hearing will not fall within the ambits of "interlocutory order."

12. In my view, therefore denial of this right of cross-examination to the accused is not an order passed which is purely interim or temporary in nature. The learned Sessions Judge has decided the rights and liabilities of the accused finally and the order of the learned Sessions Judge touch the important rights and liabilities of the accused and give a final shape to the orders passed therein at this stage during the course of hearing, in my view, the order substantially affects the rights and liabilities of the accused and, therefore, it cannot be called as an interlocutory order. In my view, the expression "interlocutory order" is a contradiction to what is known as final order and denotes an order of an interim in nature. In my view, this order of denial

to cross-examination cannot be termed as interim or temporary nature because it determines the rights of the accused finally at this stage which cannot be recalled in future. In my view, damage to the accused is final and complete and therefore this order can be termed as final order and cannot be termed as interlocutory order. Therefore the present revision application is maintainable.

13. In the facts and circumstances of the case and in view of the discussions made hereinabove, this Criminal Revision Application deserves to be allowed and accordingly it is allowed. The orders passed by the learned Sessions Judge, Bharuch, vide Exhs.37, 38, 39 and 55 in Sessions Case No.130 of 1999 is quashed and set aside. I, therefore, direct the learned Sessions Judge, Bharuch, to recall the prosecution witness No.13 Maheshbhai Natvarbhai, prosecution witness No.14 Gautam Shanabhai and prosecution witness No.15 Manojbhai Ravjibhai and to permit the learned advocate for the accused to cross-examine them for the limited purpose of contradicting them with their respective police statements and also to permit him to cross-examine them in connection with those and other related facts. Rule is made absolute accordingly.

(K.M. Mehta, J.)

syed/